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Hearing Date: May 30, 2012, 10:00 AM

*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff Investment
Securities LLC,

Plaintiff,

v.

THE DEFENDANTS IDENTIFIED IN
EXHIBIT A,

Defendants.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. As Identified in Exhibit A
(BRL)

LIMITED NOTICE OF WITHDRAWAL OF TRUSTEE’S APPLICATION SEEKING ENTRY OF ORDER DIRECTING DEFENDANTS TO MAKE EXPEDITED LIMITED INITIAL DISCLOSURES OR PROVIDE IMMEDIATE NOTICE

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* (“SIPA”) and the estate of Bernard L. Madoff (“Madoff”), by and through his undersigned counsel, hereby withdraws—only as to the Defendants identified in the chart below—his application by way of order to show cause dated May 7, 2012 for an order directing certain Defendants identified in Exhibit A to make expedited limited initial disclosures, or to provide immediate notice of certain adversary proceedings (“Application”). The Application has been withdrawn as to certain Defendants because the parties have addressed the issues.

Following this Court’s and the British Virgin Islands Court’s approval of the settlement between the Trustee and the Liquidators of the Fairfield Funds¹, the Trustee began filing a series of adversary proceedings against defendants, who, based on the documents available to the Trustee, received large subsequent transfers of Customer Property through the Fairfield Funds. The Trustee filed the first of these proceedings in August 2011, and the filings have continued since that time. Through April 1, 2012, the Trustee has named 135 defendants in separate 74 adversary proceedings. Translating and serving complaints under The Hague Convention on the

¹ Terms not otherwise defined herein have the meanings ascribed to them in the Trustee’s Memorandum of Law dated May 7, 2012 filed in support of the Application.

Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters often took months.

Prior to filing each complaint, counsel for the Trustee carefully reviewed information as to the transfers each defendant received. In so doing, counsel reviewed approximately 375,000 documents produced by the Fairfield Greenwich Group, the Fairfield Funds, and the Fairfield Funds' custodian, Citco Global Custody N.V. Within these documents, the Trustee had visibility only to the Fairfield Funds' registered investors.

Upon service, all but one defendant requested extensions of time to respond to the Trustee's complaints. The Trustee agreed to the requests in light of the proceedings taking place in the *Picard v. Katz* case assigned to Judge Rakoff in the District Court. The parties hoped that after Judge Rakoff's ruling on the motions to dismiss in *Katz*, a request to file an interlocutory appeal would be granted, thus giving the parties in these adversary proceedings finality as to the common issues of law concerning the avoidance provisions at issue. In addition, defendants sought extensions on the grounds they did not want to expend resources litigating legal issues that might be resolved in other adversary proceedings pending in, or on appeal from, the District Court.

The District Court ultimately denied the Trustee's request to file an interlocutory appeal in the *Katz* case in January 2012. As a consequence, and at the request of the defendants, the parties in these proceedings agreed to further extensions of time to await a decision on motions for summary judgment in *Katz*. The District Court ruled on the motions for summary judgment in February, 2012, shortly before the March response dates in the present adversary proceedings. As a result, the Trustee agreed to the defendants' requests to further extend the response date until early June. In addition to those defendants who requested and received extensions of time,

the Trustee also agreed to extensions of time as to those defendants on whom the Complaint was served in March or April.

In the interim, this Court entered an order granting parties the ability to extend response dates without further court order until September 14, 2012. Based on this order, several defendants requested their response date be extended again to September. The Trustee's counsel was mindful of the July 13, 2012 one-year anniversary of the finalization of the Fairfield Funds settlement, and several defendants alluded to the fact that they might assert a conduit defense. As a result, the Trustee agreed only to extend the response date if the requesting defendant was willing to waive the conduit defense in the stipulation extending the response date beyond July 13, 2012. A number of defendants agreed to do so and the stipulations documenting their waiver were filed with the Court. In contrast, a number of defendants were not only unwilling to waive the defense; they also refused to disclose whether they intended to assert the conduit defense. Consequently the Trustee refused to extend their response dates past the June, 2012 deadline.

Late during this process, some defendants argued the statute of limitations would expire not on July 13, 2012, but instead on June 7, 2012, the date this Court first conditionally approved the Fairfield Funds settlement. Faced with the information that the Trustee may have sued conduits rather than the beneficial transferees, and there existing no other source of information as to the identity of the beneficial transferees, the Trustee filed the Application in light of the purported June 7, 2012 statute of limitations deadline.

On May 12, 2012, numerous objections were filed to the Trustee's Application by the Defendants. Among other objections, the Defendants argued that foreign law precludes them from disclosing the names and addresses of former and present clients sought by the Trustee, that

this information would have to be sought using the Hague Convention, and that the Trustee is not entitled to the disclosure of this information under the Federal Rules of Civil Procedure.

At a hearing on the Application held on May 14, 2012, the Court ordered counsel for the Trustee to further meet and confer with the remaining defendants opposing the Application to attempt to resolve the objections. During such conferences, certain Defendants identified in the chart below represented that they would not raise a conduit defense. Other Defendants continued to refuse to disclose the identities and addresses sought by the Trustee and argued that they were simply unable to disclose under foreign law. The parties agreed that these Defendants, also identified in the chart below, would provide notice of the Trustee's litigation seeking the recovery of funds transferred to the Defendants' principals who may have received subsequent transfers of customer property through the Fairfield Funds.

Based on the foregoing, the Trustee has agreed to withdraw the Application as to the Defendants identified in the chart below.

<u>Defendant</u>	<u>Adversary Proceeding Number</u>	<u>Application ECF Docket Number</u>
Abu Dhabi Investment Authority	11-02493	14
Arden Asset Management LLC	12-01023	13
Banco Bilao Vizcaya Argentaria, S.A.	10-05351	37
Banco Itau Europa International	12-01019	17
Banco Itau Europa Luxembourg S.A.	12-01019	17
Bank Hampoalim B.M.	12-01216	5

<u>Defendant</u>	<u>Adversary Proceeding Number</u>	<u>Application ECF Docket Number</u>
Bank Julius Baer & Co. Ltd.	11-02922	10
Banque Privee Espirito Santa S.A.	11-02571	14
Banque Syz & Co., S.A.	11-02149	20
Barclays Bank (Suisse) S.A.	11-02569	16
Barclays Bank S.A.	11-02569	16
Barclays Private Bank & Trust Limited	11-02569	16
Brown Brothers Harriman & Co.	12-01217	5
Caceis Bank	11-02758	12
Citibank Global Markets Limited	10-05345	37
Concord Management LLC	11-02543	14
Delta National Bank And Trust Company	11-02551	10
DEZ Financial Management Ltd.	11-02552	16
Fullerton Capital Pte Ltd.	12-01004	11
Korea Exchange Bank	11-02572	12
Landis Inversiones S.L.	11-02930	10
Meritz Fire & Marine Insurance Co. Ltd.	11-02539	15
Merrill Lynch Bank (Suisse) S.A.	11-02910	7
National Bank Of Kuwait S.A.K.	11-02554	12

<u>Defendant</u>	<u>Adversary Proceeding Number</u>	<u>Application ECF Docket Number</u>
Pictet Et Cie	11-01724	17
Quilvest Finance Limited	11-02538	11
Six Sis AG	12-01195	3
SNS Bank N.V.	12-01046	13
SNS Global Custody B.V.	12-01046	13
Somers Dublin Limited	11-02784	15
Somers Nominees (Far East) Limited	11-02784	15
Standard Chartered Bank International (Americas) Ltd.	12-01565	4
Standard Chartered International (USA) Ltd.	12-01565	4
Unifortune Asset Management Sgr S.P.A.	11-02553	13
Unifortune Conservative Fund	11-02553	13
Vontobel Asset Management Inc.	12-01202	4

The Trustee's Application shall proceed at the hearing scheduled for May 30, 2012 at 10:00 a.m. before the Honorable Burton R. Lifland as to the following Defendants: BSI AG and Falcon Private Bank Ltd.

A copy of this notice is being filed in all adversary proceedings and served on all counsel of record.

Dated: May 29, 2012
New York, New York

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Exhibit A

Defendant	Adversary Proceeding Number
ABU DHABI INVESTMENT AUTHORITY	11-02493
ARDEN ASSET MANAGEMENT LLC	12-01023
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	10-05351
BANCO ITAU EUROPA INTERNATIONAL	12-01019
BANCO ITAU EUROPA LUXEMBOURG S.A.	12-01019
BANK HAMPOALIM B.M.	12-01216
BANK JULIUS BAER & CO. LTD.	11-02922
BANQUE PRIVEE ESPIRITO SANTA S.A. (F/K/A COMPAGNIE BANCAIRE ESPIRITO SANTO S.A.)	11-02571
BANQUE SYZ & CO., S.A.	11-02149
BARCLAYS BANK (SUISSE) S.A.	11-02569
BARCLAYS BANK S.A.	11-02569
BARCLAYS PRIVATE BANK & TRUST LIMITED	11-02569
SIX SIS AG	12-01195
BROWN BROTHERS HARRIMAN & CO.	12-01217
BSI AG, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO BANCO DEL GOTTARDO	12-01209
CACEIS BANK	11-02758
CACEIS BANK LUXEMBOURG	11-02758
CITIBANK GLOBAL MARKETS LIMITED	10-05345
CONCORD MANAGEMENT LLC	11-02543
DELTA NATIONAL BANK AND TRUST COMPANY	11-02551
DEZ FINANCIAL MANAGEMENT LTD.	11-02552
FALCON PRIVATE BANK LTD. (f/k/a AIG PRIVAT BANK AG)	11-02923
FULLERTON CAPITAL PTE LTD.	12-01004
KOREA EXCHANGE BANK INDIVIDUALLY, AND AS TRUSTEE FOR KOREA GLOBAL ALL ASSET TRUST I-1 AND TAMS RAINBOW TRUST III	11-02572
LANDIS INVERSIONES S.L.	11-02930
MERITZ FIRE & MARINE INSURANCE CO. LTD.	11-02539
MERRILL LYNCH BANK (SUISSE) S.A.	11-02910
NATIONAL BANK OF KUWAIT S.A.K.	11-02554
PICTET ET CIE	11-01724
QUILVEST FINANCE LIMITED	11-02538
SNS BANK N.V.	12-01046
SNS GLOBAL CUSTODY B.V.	12-01046
SOMERS DUBLIN LIMITED	11-02784
SOMERS NOMINEES (FAR EAST) LIMITED	11-02784
STANDARD CHARTERED BANK INTERNATIONAL (AMERICAS) LTD. f/k/a AMERICAN EXPRESS BANK INTERNATIONAL	12-01565
STANDARD CHARTERED INTERNATIONAL (USA) LTD. f/k/a AMERICAN EXPRESS BANK LTD.	12-01565
UNIFORTUNE ASSET MANAGEMENT SGR S.P.A.	11-02553
UNIFORTUNE CONSERVATIVE FUND	11-02553
VONTOBEL ASSET MANAGEMENT INC.	12-01202